REMARKS

The Office Action of April 29, 2005, entirely in the nature of what appears to be a hybrid restriction/election requirement, has been carefully reviewed. The claims in the present application are now claims 1-12. Applicants respectfully request favorable reconsideration.

Applicants have claimed priority from their corresponding application filed in Japan on September 30, 2002, and applicants filed a certified copy of the priority application in the PTO on February 13, 2004. **Accordingly, applicants respectfully request the examiner to acknowledge receipt by the PTO of applicants' papers filed under Section 119.**

Applicants have added new claims 7-12 above directed to the method of use, consistent with U.S. practice. As pointed out below, applicants' invention relates to a new use, and not dyes *per se*. As no search and/or examination on the merits has yet been conducted by the PTO, applicants should have the right to elect their new use claims, if same are considered restrictible from claims 1-6, i.e. there should be no withdrawal of claims 7-12 by "original presentation" of claims 1-6 when claims 1-6 have not been examined.

Accordingly, applicants hereby respectfully and provisionally elect new claims 7-12 without prejudice.

Restriction/election has been required from among the five (5) groups outlined on pages 2 and 3 of the Official Action. Applicants must make an election even if the requirement is traversed, and therefore applicants have made above what they consider to be a proper election based on the

new claims, which does not fall into one of the five original groups.[1] For the record, applicants respectfully object to and therefore traverse the original restriction requirement.

Each of the six original claims calls for all five groups. The PTO has no right and cannot validly require an applicant to break his or her claims into subgroups. An applicant has the right to claim his or her invention just as broadly as he or she wishes, and the PTO must grant such claims so long as such claims meet the requirements for patentability, i.e. Sections 101, 102, 103 and 112. In effect, a restriction/election requirement of the present type is an effort by the PTO to circumvent the rules and force applicants to claim less than they wish to claim.

Therefore, the requirement is improper procedurally, and should be withdrawn for that reason alone.

On the merits, and as noted above, the claimed invention provides a new use of an organic dye compound as an agent for evoking receptor potential, as described in applicants' specification at page 3 in the "Summary" section. In this regard, applicants are not claiming the organic dye compound *per se*, but instead are claiming the novelty of the use of such compound as an agent for evoking receptor potential.

Accordingly, applicants believe that the grouping of the claimed invention in the restriction requirement from the aspect of the structure of an organic dye compound completely misses the point. Examination of the claimed invention should be conducted on the basis of such a new use of the organic dye

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[1] Applicants believe that it is proper and responsive to elect the method claims. However, if there is a further required election within the method claims along the lines of the five groups outlined on pages 2 and 3 of the Official Action, then applicants would further respectfully and provisionally elect the Group I invention as a method of use, with traverse and without prejudice.

compound, i.e. on the basis of whether such an organic dye compound had previously been known as an agent for evoking receptor potential.

Withdrawal of the requirement is respectfully requested.

Applicants respectfully await the results of a first action on the merits of at least claims 7-12.

Respectfully submitted,

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